

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN POLYESTER STAPLE FIBER FROM KOREA AND TAIWAN

Investigations Nos. 731-TA-825-826 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3300, May 2000)

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Korea and Taiwan of certain subject polyester staple fiber, other than low-melt fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States, that has been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).²

The Commission further determines, pursuant to section 735(b) of the Act, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Korea and Taiwan of low-melt polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at LTFV.³

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Chairman Bragg found one domestic like product and therefore made an affirmative determination with respect to all certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States.

³ Chairman Bragg found one domestic like product and therefore made an affirmative determination with respect to all certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States.

BACKGROUND

The Commission instituted these investigations effective April 2, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by E.I. DuPont de Nemours, Wilmington, DE; Arteva Specialities S.a.r.l. d/b/a KoSa, Spartanburg, SC; Nan Ya Plastics Corp., America, Lake City, SC; Wellman, Inc., Shrewsbury, NJ; and Intercontinental Polymers, Inc., Charlotte, NC, on April 2, 1999.⁴ The final phase of the investigations was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain polyester staple fiber from Korea and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 24, 1999 (64 FR 66198). The hearing was held in Washington, DC, on March 28, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 15, 2000. The views of the Commission are contained in USITC Publication 3300 (May 2000), entitled *Certain Polyester Staple Fiber from Korea and Taiwan: Investigations Nos. 731-TA-825-826 (Final)*.

By order of the Commission.

Donna R. Koehnke
Secretary

⁴ Nan Ya Plastics Corp. is no longer a petitioner in these investigations. DuPont is not a petitioner in the investigation on Taiwan.

Issued:

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of low-melt fiber from Korea and Taiwan that the Department of Commerce (“Commerce”) found to be sold in the United States at less than fair value (“LTFV”);¹ we also determine that an industry in the United States is materially injured by reason of all other subject imports of certain polyester staple fiber (herein “conventional PSF”) from Korea and Taiwan that Commerce found to be sold in the United States at LTFV.²

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The

¹ Chairman Bragg determines, based upon her finding that there is one domestic like product coextensive with the scope of these investigations and which includes all certain polyester staple fiber (“certain PSF”), that the domestic industry is materially injured by reason of subject imports. She therefore joins the majority’s findings with respect to conventional PSF, but dissents from the majority’s findings with respect to low-melt fiber.

² We note that because Commerce made final negative critical circumstances determinations with respect to subject imports from Korea and Taiwan, the critical circumstances issue is moot. See 65 Fed. Reg. 16880 (Mar. 30, 2000); 65 Fed. Reg. 16877 (Mar. 30, 2000); 65 Fed. Reg. 24678 (Apr. 27, 2000) (amended final determ.); 19 U.S.C. § 1673d(b)(4)(A)(i).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., NEC Corp. v. Dep’t of Commerce and U.S. Int’l Trade Comm’n, 36 F. Supp. 2d 380 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept Commerce's determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of these investigations as follows:

certain polyester staple fiber ("PSF"). Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed, or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these investigations may be coated, usually with a silicon[e] or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from these investigations. Also specifically excluded from these investigations are polyester staple fibers of 10 to 18 denier that are cut-to-lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to these investigations is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.¹⁰

C. Domestic Like Product Issues¹¹

In the preliminary phase of these investigations, based on an application of its traditional six-factor analysis, the Commission found one domestic like product coextensive with the scope of these investigations and consisting of all certain PSF.¹² In so doing, the Commission considered whether low-

⁸ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

⁹ Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ 65 Fed. Reg. 16880 (Mar. 30, 2000) (Korea); 65 Fed. Reg. 16877 (Mar. 30, 2000) (Taiwan); 65 Fed. Reg. 24678 (Apr. 27, 2000) (amended final determ.).

¹¹ Chairman Bragg concurs with the analysis of the domestic like product except for the low-melt fiber discussion in Section I.C.1.

¹² Certain Polyester Staple Fiber from Korea and Taiwan, Inv. Nos. 731-TA-825-826 (Prelim.), USITC Pub. 3197, at 5 (May 1999) ("Preliminary Determination").

melt fiber, conjugate fiber, and regenerated fiber¹³ are separate domestic like products. The Commission also considered whether PSF made from virgin raw materials is a separate domestic like product from PSF made from recycled materials. Although the Commission determined that all such products were part of one domestic like product for purposes of the preliminary phase of these investigations, the Commission indicated that it would revisit these issues in any final phase investigations.¹⁴

In the final phase of these investigations, petitioners again argued that there is only one domestic like product that is co-extensive with the scope of these investigations, and the domestic like product encompasses a continuum of products.¹⁵ Respondents contended that low-melt fiber and conjugate fiber should be treated as separate domestic like products from all other certain PSF.¹⁶ As explained below, we determine that there are two domestic like products corresponding to (1) low-melt fiber and (2) conventional PSF (all subject PSF except for low-melt fiber).

1. Low-Melt Fiber is a Separate Domestic Like Product¹⁷

Based on comments from the parties, low-melt fiber was defined for purposes of the final phase of these investigations as:

a bicomponent fiber comprised of a polyester core and a sheath of copolymer polyester which is typically used to thermal bond other polyester staple fiber in the manufacture of batting for bulk applications such as furniture stuffing and insulation. When heated, the outer copolymer sheath melts at a lower temperature than its core, and the melted sheath acts as a glue to hold the polyester staple fibers together.¹⁸

¹³ For purposes of the final phase of these investigations, regenerated fiber was defined as “polyester staple fiber produced primarily from waste polyester fibers but may also include other polyester waste products such as non-fiber polyester solids. It generally has inconsistent physical properties, such as irregular color, denier, staple length, and crimp count. It is generally sold without specifications, guarantees, or warranties of any kind.” General Information, Instructions and Definitions for Commission Questionnaires, Inv. Nos. 731-TA-825-826 (Final) at 4. In the final phase of these investigations, respondents no longer argue that regenerated fiber is a separate domestic like product.

¹⁴ Id. at 5-11.

¹⁵ Petitioners’ Prehearing Brief at 1-25; Petitioners’ Posthearing Brief at 1-4; Hearing Tr. at 26-32.

¹⁶ Korean Prehearing Brief at 2-21; Taiwan Prehearing Brief at 5-11, 15-20.

¹⁷ Chairman Bragg determines that there is one domestic like product coextensive with the scope of these investigations and which includes all certain PSF. She therefore does not join this section. The record in these final investigations indicates that all forms of certain PSF share similar channels of distribution; common manufacturing facilities, employees, and processes; and are priced similarly (although higher quality fiber is often priced higher than lower quality fiber products). CR at I-3 to I-4, II-1, PR at I-2 to I-3, II-1; Petitioners’ Prehearing Brief at 23-24; Hearing Tr. at 21. And while the record indicates that low-melt fiber is the only type of PSF used as a bonding agent without further modification, other PSF products are also used as bonding agents when treated with resin. CR at I-9, PR at I-6. In addition, the use of low-melt fiber imparts the same end-use characteristics of increased loft and softness as other types of PSF. Hearing Tr. at 54, 136-37. Chairman Bragg therefore determines that on balance, low-melt fiber is not a separate domestic like product, but is rather part of the continuum of certain PSF products.

¹⁸ General Information, Instructions and Definitions for Commission Questionnaires, Inv. Nos. 731-TA-825-826 (Final) at 4.

As discussed below, application of the like product factors results in our finding that low-melt fiber is a separate domestic like product.

Physical Characteristics and Uses: The record indicates that low-melt fiber is a bicomponent fiber with a unique sheath/core structure, distinguishing it from both conjugate, another bicomponent fiber, and conventional PSF, which is usually monocomponent. Low-melt fiber's outer sheath has a unique property that allows it to melt at lower temperatures.¹⁹ Low-melt fiber is used in batting applications because of its special bonding characteristics and its ability to prevent fiber migration, whereas conventional PSF is used as filler material because of its loft characteristics.²⁰ Low-melt fiber provides only limited loft and would never be used alone as a filler in end product applications.²¹ Low-melt fiber replaces an antiquated spray bonding process in which chemical resins or powders are sprayed on conventional PSF – a process that is considered to pose environmental hazards.²²

Interchangeability: The parties agree that unlike conventional PSF, low-melt fiber would not be used on its own in fiber fill applications.²³ Accordingly, conventional PSF is not substituted for low-melt fiber because low-melt fiber is used for its special bonding characteristics. Similarly, because low-melt fiber does not provide as much loft as conventional PSF, it would not be substituted for conventional PSF used to provide loft.²⁴

Channels of Distribution: The record indicates, and the parties agree, that low-melt fiber is sold through the same channels of distribution – i.e., primarily to end users, but sometimes through distributors – as other types of certain PSF.²⁵

Common Manufacturing Facilities, Employees, and Processes: Although domestic producers use the same employees to produce low-melt fiber and conventional PSF,²⁶ the production process for low-melt fiber differs from the production process for conventional PSF. A *** is used to produce low-melt fiber.²⁷ Whereas the Y-shaped spinneret used to produce low-melt fiber is also used to produce conjugate fiber, a chemical ingredient not used in conjugate fiber production is added during low-melt fiber production to provide the low temperature melting characteristics, and the bi-polymer blend added during

¹⁹ CR at I-9 to I-10, PR at I-6.

²⁰ CR at I-9 to I-10, PR at I-6; CR and PR at Table II-2.

²¹ CR at I-9 to I-10, PR at I-6; CR and PR at Table II-3; Hearing Tr. at 54, 136-37.

²² CR at I-9, PR at I-6.

²³ CR at I-9, PR at I-6.

²⁴ CR at I-8 to I-9, PR at I-6; CR and PR at Table II-3; Taiwan Prehearing Brief at 11-13, 16-17; Korean Prehearing Brief at 8-9; Taiwan Posthearing Brief at 10-12; Petitioners' Prehearing Brief at 23-24; Hearing Tr. at 21.

²⁵ CR at I-9 to I-10, II-1, PR at I-6, II-1; Taiwan Prehearing Brief at 18; Petitioners' Prehearing Brief at 24.

²⁶ Petitioners' Prehearing Brief at 24.

²⁷ Petitioners' Prehearing Brief at 24.

conjugate fiber production is not added during low-melt fiber production.²⁸ The stretching, cutting, and baling operations are similar for all types of certain PSF.²⁹

Producer and Customer Perceptions: Whereas two of three domestic producers reported that low-melt fiber is interchangeable with other types of certain PSF, twelve of thirteen importers and twenty-six of twenty-seven purchasers reported that low-melt fiber is not interchangeable with other certain PSF.³⁰

Price: Respondents argued that low-melt fiber is more expensive than conventional PSF; petitioners disagreed.³¹ It is difficult to draw meaningful insights about pricing similarities between domestically-produced low-melt fiber and conventional PSF because it is not clear how comparable the selected pricing products are – in terms of denier, hollowness, and slickness.³² The product pricing data on the record, however, show that prices for domestic low-melt fiber were consistently higher than prices for all other certain PSF, with the exception of a conjugate fiber product.³³

We find that low-melt fiber's unique bonding characteristics, its very different use, its lack of interchangeability with conventional PSF, the significant consensus among purchasers that low-melt fiber is a different product, and the differences in the production process outweigh the similarities in the channels of distribution and limited similarities in physical characteristics and production processes and employees between low-melt fiber and conventional PSF. Accordingly, we find that low-melt fiber is a separate domestic like product.

2. Conjugate Fiber is Not a Separate Domestic Like Product

Based on comments from the parties, conjugate fiber was defined for purposes of the final phase of these investigations as:

a hollow, siliconized fiber with a spiral configuration imparted by a chemical process that bonds two different polyester polymers of different viscosity causing one side to shrink to produce spiral-shaped crimps. Conjugate fibers can be produced by both direct spinning and batch spinning. Whether direct or batch, conjugate fibers require a double spinning process since they are composed of a bipolymer blend.³⁴

²⁸ CR at I-9 to I-10, PR at I-6; Korean Prehearing Brief at 10, 13.

²⁹ CR at I-4 to I-5, I-7 to I-8, PR at I-3 to I-4.

³⁰ CR at II-8 to II-11, PR at II-6 to II-9. Domestic producer *** is the only purchaser to report that low-melt fiber is interchangeable with other certain PSF. See also CR and PR at Table II-3 for a summary of specific comments regarding interchangeability; Taiwan Prehearing Brief at 12-13, 18-19; Korean Prehearing Brief at 9; Joint Respondents' Prehearing Brief at Exhibit A (including various affidavits and declarations from purchasers).

³¹ Taiwan Prehearing Brief at 19; Korean Prehearing Brief at 10; Petitioners' Prehearing Brief at 25.

³² CR at V-6, PR at V-5; compare CR and PR at Table V-7 with CR and PR at Tables V-1 to V-6 and V-8 to V-9.

³³ CR and PR at Tables V-1 to V-9.

³⁴ General Information, Instructions and Definitions for Commission Questionnaires, Inv. Nos. 731-TA-825-826 (Final) at 4.

As discussed below, application of the like product factors results in our finding that conjugate fiber is not a separate domestic like product.

Physical Characteristics and Uses: The record indicates that even though conjugate fiber generally is produced from two polymers rather than a single polymer, conjugate fiber and other certain PSF share the same basic chemical composition, and other certain PSF may be crimped into three dimensions, just like conjugate fiber.³⁵ Conjugate fiber is destined for the same end uses – providing loft in pillows, comforters, cushions, furniture, mattresses, sleeping bags, and jackets – as other certain PSF.³⁶

Interchangeability: The record indicates that conjugate fiber can be blended with other types of certain PSF for the same types of end uses. Some purchasers and importers reported that conjugate fiber is a technologically advanced product suitable for high-end uses, with better filling power and shape retention. We find, however, that overall, the record reflects that even if conjugate fiber is of a higher quality, it is generally interchangeable with other certain PSF and used in the same applications.³⁷

Channels of Distribution: Conjugate fiber is sold through the same channels of distribution – i.e., primarily to end users, but sometimes through distributors – as other types of certain PSF.³⁸

Common Manufacturing Facilities, Employees, and Processes: The record indicates that domestic producers use the same employees to produce conjugate fiber as other types of certain PSF.³⁹ The production process and manufacturing facilities for conjugate fiber appear to differ somewhat from those used to produce other certain PSF – conjugate fiber requires a double spinning system to combine two polymers of differing viscosity and the addition of a bi-polymer blend.⁴⁰ The second stage of manufacturing (stretching, cutting, and baling), however, is similar for all types of certain PSF.⁴¹

Producer and Customer Perceptions: Responses were mixed regarding whether producers and customers perceive conjugate fiber to be a different product than other certain PSF. Whereas four domestic producers, six importers, and fourteen purchasers reported that conjugate fiber is at least somewhat interchangeable with other types of certain PSF, eight importers and sixteen purchasers reported that conjugate fiber is not interchangeable with other certain PSF.⁴²

³⁵ CR at I-4 n.6, I-5, I-8, PR at I-3 & n.6, I-5, I-8.

³⁶ CR at I-7, PR at I-4; Hearing Tr. at 22-23.

³⁷ CR at I-7, II-5, II-8, PR at I-4, II-3, II-6; CR and PR at Table II-2; Hearing Tr. at 22-23.

³⁸ CR at I-7, II-1, PR at I-4, II-1; Korean Prehearing Brief at 5; Taiwan Prehearing Brief at 9; Petitioners' Prehearing Brief at 20.

³⁹ Petitioners' Prehearing Brief at 21.

⁴⁰ CR at I-4, PR at I-3; Korean Prehearing Brief at 13.

⁴¹ CR at I-4 to I-5, I-7 to I-8, PR at I-3 to I-4.

⁴² CR at II-5, PR at II-3 to II-4; see also Korean Prehearing Brief at 6, 12; Taiwan Prehearing Brief at 9-10, Exhibit 8 (containing letters from purchasers); Joint Respondents' Prehearing Brief at Exhibit A (including various affidavits from purchasers and importers); Hearing Tr. at 186.

Price: The domestic prices of the only type of domestically-produced conjugate fiber for which pricing data were collected⁴³ were *** the prices of other certain PSF, but it is not clear how ***.⁴⁴

On balance, the record does not support a finding that conjugate fiber is a separate domestic like product. Conjugate fiber and other certain PSF have similar physical characteristics and identical end uses, are sold through the same channels of distribution, and are manufactured using the same employees and similar production processes. Conjugate fiber and other certain PSF are frequently regarded as interchangeable, and responses were mixed regarding whether conjugate fiber is a different product. Thus, conjugate fiber is not clearly distinct from other types of certain PSF; it is part of a continuum of PSF products used for loft that are included within the scope of these investigations. Where the domestically manufactured merchandise is itself within the continuum of similar products, the Commission generally does not consider each item of merchandise to be a separate domestic like product, but considers the continuum itself to be the domestic like product.⁴⁵

Accordingly, we find two domestic like products corresponding to (1) low-melt fiber, and (2) conventional PSF.

II. DOMESTIC INDUSTRY⁴⁶

A. In General

Section 771(4) of the Act defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product.”⁴⁷ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.⁴⁸ Based on

⁴³ There were no domestic sales of conjugate fiber Product 6 during the POI. CR and PR at Table V-6.

⁴⁴ Compare CR and PR at Table V-5 with CR and PR at Table E-2.

⁴⁵ See, e.g., Certain Steel Wire Rod From Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 701-TA-763-766 (Final), USITC Pub. 3075 at 7 (Nov. 1997).

⁴⁶ Chairman Bragg defines the domestic industry as all domestic producers of certain PSF, including low-melt fiber.

⁴⁷ 19 U.S.C. § 1677(4)(A).

⁴⁸ See, e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see generally, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (“OCTG”), Inv. Nos. 701-TA-363-364 (Final) and Inv. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of “limited levels of capital investment, lower levels of expertise, and lower levels of employment”).

our finding of two domestic like products, we define two corresponding domestic industries: (1) all domestic producers of low-melt fiber;⁴⁹ and (2) all domestic producers of conventional PSF.⁵⁰

B. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industries pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers.⁵¹ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁵²

In the preliminary phase of these investigations, the Commission determined that appropriate circumstances did not exist to exclude *** and Nan Ya America from the domestic industry.⁵³ In the final phase of these investigations, the parties concur that the Commission should not exclude any producers from the domestic industries.⁵⁴ We have considered the circumstances surrounding the importing or purchasing activities of the domestic producers and determine that appropriate circumstances do not exist to exclude any producers from the domestic industries.⁵⁵

1. Nan Ya America⁵⁶

⁴⁹ KoSa is the only domestic producer in the domestic low-melt fiber industry. CR at III-5, PR at III-3.

⁵⁰ Thus, for purposes of our analysis, the domestic conventional PSF industry is comprised of six producers: KoSa, Wellman, DuPont, Nan Ya America, Intercontinental, and Martin Color-Fi. CR at III-1, PR at III-1.

⁵¹ 19 U.S.C. § 1677(4)(B).

⁵² Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997).

⁵³ Preliminary Determination, USITC Pub. 3197 at 12.

⁵⁴ Petitioners' Prehearing Brief at 25-27; Joint Respondents' Posthearing Brief at Appendix at 5.

⁵⁵ The merchandise that *** imported during the POI was sourced exclusively from Samyang, a Korean producer that is no longer a subject producer in these investigations. CR at IV-2 n.1, PR at IV-1 n.1. Accordingly, *** is not a related party.

⁵⁶ Nan Ya America was not a petitioner in the Taiwan investigation and eventually withdrew as a petitioner in the Korean investigation.

As a wholly owned subsidiary of Nan Ya, a subject Taiwan producer,⁵⁷ domestic producer Nan Ya America is a related party. As in the preliminary phase of these investigations, however, we find that appropriate circumstances do not exist to exclude Nan Ya from the domestic industries. Nan Ya America does not import subject merchandise from its parent or any other subject foreign producer, and its interests appear to be in domestic production. Nan Ya America's financial performance ***, and it does not appear to have benefitted from its relationship with Nan Ya. Finally, Nan Ya America produced only *** during the POI, and accounted for *** portion of domestic *** production – *** percent in 1999 – so its ***.⁵⁸

2. ***

Domestic producer *** purchased subject imports of *** during the POI from importer *** who in turn imported *** from ***.⁵⁹ The threshold question is whether these purchases establish that *** is “related” under the statute by directly or indirectly controlling an exporter or importer.⁶⁰

The Commission generally has found direct or indirect control to exist where a producer was responsible for a predominant share of an importer's purchases, and the importer's purchases were substantial.⁶¹ Although *** imports in 1999 constituted *** percent of *** total exports of subject *** to the United States, they constituted only *** percent of *** 1999 production. Moreover, *** accounted for only *** percent of *** business in 1999 (***). *** purchases of *** represented only ***, ***, and *** percent of total subject imports of ***, respectively, in 1997, 1998, and 1999.⁶² Absent any indication that *** purchases of *** from *** give it direct or indirect control over ***, we do not find that *** is a related party.

⁵⁷ CR at III-3, PR at III-2.

⁵⁸ CR at I-1 n.2, III-1, III-3 to III-4, IV-2 n.1, PR at I-1 n.2, III-1, III-2, IV-2 n.1; see also CR and PR at Table VI-2; Questionnaire response of Nan Ya; Taiwan Posthearing Brief at 1-4.

⁵⁹ Questionnaire responses of ***.

⁶⁰ 19 U.S.C. § 1677(4)(B)(ii).

⁶¹ See, e.g., Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10, n.50 (April 1997).

⁶² CR at III-1, Table VI-2, PR at III-1; Questionnaire responses of ***.

III. MATERIAL INJURY ANALYSIS BY REASON OF LTFV IMPORTS OF CONVENTIONAL PSF FROM KOREA AND TAIWAN

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.⁶³ In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁶⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶⁵ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁶ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶⁷

For the reasons discussed below, we determine that the domestic industry producing conventional PSF is materially injured by reason of LTFV imports from Korea and Taiwan.⁶⁸

A. Cumulation

1. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like product in the U.S. market.⁶⁹ In assessing whether subject imports compete with each other and with the domestic like product,⁷⁰ the Commission has generally considered four factors, including:

⁶³ 19 U.S.C. § 1673d(b).

⁶⁴ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); *see also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁶⁵ 19 U.S.C. § 1677(7)(A).

⁶⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁸ Chairman Bragg joins in this determination. She notes that including low-melt fiber in the data and injury analysis strengthens the conclusion that the domestic industry producing certain PSF is materially injured by reason of LTFV imports of all forms of certain PSF from Korea and Taiwan.

⁶⁹ 19 U.S.C. § 1677(7)(G)(i).

⁷⁰ The SAA (at 848) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition,” *citing* Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988).

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁷¹

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁷² Only a “reasonable overlap” of competition is required.⁷³

Because the petitions in these investigations were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule applies in the final phase of these investigations.⁷⁴ Therefore, we are required to determine whether there is a reasonable overlap of competition both between the subject imports from Korea and Taiwan, and between the subject imports and the domestic like product.

2. Analysis

In the preliminary phase of these investigations, the Commission cumulated subject imports from Korea and Taiwan, finding a sufficient degree of fungibility between the subject imports and between the subject imports and the domestic like product, overlap of geographic markets, similar channels of distribution, and simultaneous presence in the U.S. market.⁷⁵ In the final phase of these investigations, based on our finding of two domestic like products, we examine the cumulation issue with regard to conventional PSF separately.⁷⁶

⁷¹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁷² See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁷³ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁷⁴ These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

⁷⁵ Preliminary Determination, USITC Pub. 3197 at 13-15.

⁷⁶ Chairman Bragg finds that the majority’s cumulation analysis applies equally to low-melt fiber. She therefore cumulates subject imports of all certain PSF from Korea and Taiwan.

The parties do not dispute that the requirements are met for three of the four factors that the Commission ordinarily considers in its cumulation analysis: subject imports and the domestic like product are sold in the same geographical markets and through the same channels of distribution, and all were simultaneously present in the market. The sole cumulation issue, therefore, is the degree of fungibility between subject imports of conventional PSF from Korea and Taiwan, and between subject imports and the domestic like product.

As explained in more detail in the conditions of competition discussion infra at section III-B, we find that conjugate fiber and regenerated fiber compete to a substantial degree with all other conventional PSF (herein “residual PSF”) in the U.S. conventional PSF market. We therefore find that there is a substantial fungibility between subject imports of conventional PSF from Korea and Taiwan, and between subject imports of conventional PSF and the domestic like product.⁷⁷

Based on our findings of overlapping geographical markets and channels of distribution, simultaneous presence, and fungibility between subject imports from Korea and Taiwan, and between subject imports of conventional PSF from Korea and Taiwan and the domestic like product, we find that there is a reasonable overlap of competition between subject imports from Korea and Taiwan, and between the subject imports and the domestic like product. Consequently, we cumulate subject imports from Korea and Taiwan for purposes of our analysis of whether the domestic industry is materially injured by reason of the subject imports of conventional PSF.

B. Conditions of Competition

There are several conditions of competition that are relevant to our analysis in these investigations. Demand for conventional PSF has grown steadily, by *** percent overall during the POI, as a healthy economy – particularly a strong new housing market – has contributed to the increase in demand for conventional PSF, which is consumed in the production of various home-related products, such as furniture, sleep products, and insulation and filtration products.⁷⁸ The cost share of certain PSF in downstream products varies widely but can be quite high, ranging from 2.0 to 80.0 percent of the total per

⁷⁷ Even if we were to examine the different types of conventional PSF separately, we would still find sufficient fungibility. While differing somewhat in product mix, the volume of subject merchandise imported by producers in Korea and Taiwan included each variety of conventional PSF. During the POI, most of the subject imports of conventional PSF from Taiwan were conjugate fiber (*** percent of total subject imports of conventional PSF from Taiwan) and residual PSF (*** percent of total subject imports of conventional PSF from Taiwan), and a smaller portion were regenerated fiber (*** percent of total subject imports of conventional PSF from Taiwan), whereas most of the subject imports from Korea were regenerated fiber (*** percent of total subject imports of conventional PSF from Korea) and residual PSF (*** percent of total subject imports of conventional PSF from Korea), and a smaller portion were conjugate fiber (*** percent of total subject imports of conventional PSF from Korea). (Estimates of subject imports’ share of total subject imports of conventional PSF for each subject country for each type of conventional PSF are derived from information found at CR and PR at Tables IV-1 to IV-4.)

With regard to competition between subject imports of conventional PSF and the domestic like product, as indicated above, during the POI most of the subject imports from Taiwan were conjugate fiber and residual PSF, whereas most of the subject imports from Korea were regenerated fiber and residual PSF. While domestic production of conjugate fiber was ***, domestic production of regenerated fiber and residual PSF was more significant, approximately *** and *** percent of total domestic production, respectively. (Estimates of the share of domestic conventional PSF production for each type of conventional PSF are derived from information found at CR and PR at Tables IV-5 to IV-12.)

⁷⁸ CR at II-2, PR at II-1 to II-2.

unit cost.⁷⁹ Much of the certain PSF marketed in the United States faces little competition from substitutes, so price changes are likely to have little overall effect on the demand for certain PSF, although the relatively high cost share of certain PSF in some end-use products increases the sensitivity of demand to changes in the price of certain PSF.⁸⁰

The production of certain PSF requires significant capital investment with relatively high fixed costs.⁸¹ Domestic producers can shift production relatively easily between certain PSF and other polyester products, such as fibers for spinning, carpet fibers, nylon fibers, or specialty fibers. The costs of switching a production line – including, *inter alia*, changing the spinneret – are small relative to the costs of assembling a new line.⁸²

While branded fiber has, in the past, been able to command some price premium, this ability has been significantly eroded. Seven purchasers decreased their purchases of branded fibers, with several commenting on lower demand for such fiber. Only two purchasers reported increasing purchases of branded fiber, and one did so due to declining prices.⁸³

We note that non-subject imports of conventional PSF accounted for only *** to *** percent of apparent domestic consumption during the POI. Thus, throughout the POI, the domestic market was dominated by domestic producers and subject imports from Korea and Taiwan.⁸⁴

Petitioners argued that the various types of conventional PSF – regenerated fiber, conjugate fiber, and “residual” fiber – are fungible and compete with each other on the basis of price.⁸⁵ Respondents argued that conjugate fiber is a superior product that competes primarily with non-PSF products, especially goose down, and that it is not made in sufficient quantities by the domestic producers. Similarly, respondents argued that regenerated fiber is an inferior product that competes primarily with non-PSF products such as foam, shoddy, wastes, etc, and that it is not made in sufficient quantities by the domestic producers.⁸⁶

We recognize that conjugate fiber and regenerated fiber may substitute for non-PSF products to some extent.⁸⁷ However, the record indicates that there is also a large degree of fungibility and direct competition between both of the types of imported fiber and domestically-produced fiber.⁸⁸ First, purchasers’ blending practices indicate that there are different mixtures of PSF that will result in the

⁷⁹ CR at II-4, PR at II-2 to II-3.

⁸⁰ CR at II-3 to II-4, PR at II-2.

⁸¹ Preliminary Determination, USITC Pub. 3197 at 16-17.

⁸² Preliminary Determination, USITC Pub. 3197 at 17; see also CR at II-2, PR at II-1.

⁸³ CR at II-18; CR and PR at Table II-6.

⁸⁴ Mem. INV-X-087 at Table C-5.

⁸⁵ Petitioners’ Prehearing Brief at 4-10, 29-30, 32-45; Petitioners’ Posthearing Brief at 4-8; Hearing Tr. at 26.

⁸⁶ Korean Prehearing Brief at 4-7; Joint Respondents’ Prehearing Brief at 25-38, 42-43; Taiwan Prehearing Brief at 2-11, 20-25; Joint Respondents’ Posthearing Brief at 6-9; Taiwan Posthearing Brief at 4-12.

⁸⁷ Joint Respondents’ Prehearing Brief at Exhibit A; CR and PR at Tables II-2, II-4.

⁸⁸ E.g., CR at II-4 to II-8, II-11 to II-31, PR at II-3 to II-7, II-9 to II-25; CR and PR at Tables II-2, II-4 to II-10; Hearing Tr. at 28-31, 34-35, 38-42, 44, 70, 78. Regenerated fiber can be spiral crimped or mechanically crimped and conjugate fiber can be produced from regenerated fiber or non-regenerated fiber, further supporting our finding of overlapping competition. Hearing Tr. at 57-58.

desired end-product.⁸⁹ Purchasers appear to be able to shift their blends to take account of differences among the types of conventional PSF. For example, purchasers may use greater quantities of lower-priced regenerated fiber and lesser quantities of other types of fiber to achieve a low price point.⁹⁰ However, in such situations, it is price concerns that drive the blending decision.

Second, respondents have failed to identify a significant market segment or end-use served by regenerated fiber or conjugate fiber that is not served by residual PSF. The large volume of imports of conjugate fiber and regenerated fiber indicates that they are not serving niche markets, but rather are competing to a large degree with residual PSF.⁹¹

Third, the pricing data do not support the argument that conjugate fiber is superior to residual PSF.⁹² Moreover, a significant number of importers and purchasers indicated that conjugate fiber and other certain PSF are interchangeable or somewhat interchangeable.⁹³

Finally, respondents' arguments regarding regenerated fiber, and the bulk of the questionnaire responses, indicate that purchasers buy regenerated fiber because it is less expensive. Therefore, in the absence of low-priced regenerated fiber, many purchasers would likely buy residual PSF. A majority of importers and purchasers indicated that regenerated fiber and residual PSF are interchangeable or somewhat interchangeable.⁹⁴

C. Volume of the Cumulated Subject Imports⁹⁵

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."⁹⁶

The overall volume of the subject imports of conventional PSF and their level of shipments in the U.S. market increased significantly during the period for which data were collected. The volume of cumulated subject imports of conventional PSF rose from *** thousand pounds in 1997 to *** thousand pounds in 1998, then declined to *** thousand pounds in 1999. Import volume, therefore, rose ***

⁸⁹ CR at II-15, II-21 to II-22, PR at II-12, II-17 to II-19; see also Joint Respondents' Prehearing Brief at Exhibit A; Hearing Tr. at 52-54, 64-65, 113-14.

⁹⁰ CR at I-11, PR at I-7; CR and PR at Table II-4; Joint Respondents' Prehearing Brief at Exhibit A; Hearing Tr. at 41, 65.

⁹¹ CR and PR at Tables IV-1, IV-2, IV-4, IV-5, IV-6, IV-8; V-1 to V-6, V-7 to V-9.

⁹² Compare CR and PR at Tables V-2 and V-4 with CR and PR at Tables V-5 and V-6.

⁹³ Four domestic producers, four of fourteen importers, and nine of thirty purchasers reported that conjugate fiber is interchangeable with other certain PSF. Two importers and five purchasers reported that conjugate fiber is at least somewhat interchangeable with other certain PSF. CR at II-5, PR at II-3. Specific comments regarding interchangeability are reproduced at CR at II-5 to II-8, PR at II-3 to II-6.

⁹⁴ Four domestic producers, five of fifteen importers, and fifteen of thirty-eight purchasers reported that regenerated fiber is interchangeable with other certain PSF. Three importers and eight purchasers reported that regenerated fiber is somewhat interchangeable with other certain PSF. CR at II-11, PR at II-9. Specific comments regarding interchangeability are reproduced at CR at II-12 to II-15, PR at II-10 to II-12.

⁹⁵ Chairman Bragg joins the majority's volume findings. She notes that the addition of low-melt fiber to the analysis strengthens a finding of a significant volume of subject imports.

⁹⁶ 19 U.S.C. § 1677(7)(C)(i).

percent from 1997 to 1999.⁹⁷ Shipments of cumulated subject imports of conventional PSF in the U.S. market increased from *** thousand pounds in 1997 to *** thousand pounds in 1998, then declined to *** thousand pounds in 1999; shipments therefore rose *** percent between 1997 and 1999. The domestic market share of shipments of cumulated subject imports increased from *** percent in 1997 to *** percent in 1999.⁹⁸ Shipments of non-subject imports rose over the POI, but their share of total apparent domestic consumption remained relatively flat.⁹⁹ U.S. producers' shipments decreased from *** thousand pounds in 1997 to *** thousand pounds in 1998, before increasing to *** thousand pounds in 1999, but their market share fell from *** percent in 1997 to *** percent in 1999.¹⁰⁰

We find that the volume of cumulated subject imports, both absolutely and in terms of shipments in the U.S. market, is significant.

D. Price Effects of the Cumulated Subject Imports¹⁰¹

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁰²

As discussed earlier, the record indicates that subject imports of conventional PSF compete to a significant degree with the domestic like product. Therefore, low-priced imports can have a price depressing or suppressing effect on the domestic like product.

The pricing data gathered in these investigations show that prices of both domestic conventional PSF and subject imports in all product categories declined overall from the beginning of 1997 to the end of 1999.¹⁰³ Following the same trend, the average unit value of subject imports declined *** percent over the POI.¹⁰⁴ Between 1997 and 1998, domestic prices for conventional PSF did not fluctuate significantly, but in the face of declining prices of subject imports of conventional PSF, domestic producers suffered

⁹⁷ Data is derived from CR and PR at Tables IV-1 to IV-4.

⁹⁸ Mem. INV-X-087 at Table C-5.

⁹⁹ Mem. INV-X-087 at Table C-5.

¹⁰⁰ Mem. INV-X-087 at Table C-5.

¹⁰¹ Chairman Bragg joins the majority's price findings. She notes that the addition of low-melt fiber to the analysis strengthens a finding of significant negative price effects. The record indicates that prices for both subject imports of low-melt fiber and domestic low-melt fiber declined steadily over the POI. CR and PR at Table V-7. In addition, subject imports of low-melt fiber undersold domestic low-melt fiber in every instance where comparisons were possible, by substantial margins ranging from *** to *** percent. CR and PR at Table V-7.

¹⁰² 19 U.S.C. § 1677(7)(C)(ii).

¹⁰³ CR and PR at Tables V-1 to V-6 and V-7 to V-9.

¹⁰⁴ Mem. INV-X-087 at Table C-5.

declining domestic shipment volumes and declining shares of apparent domestic consumption; only when domestic producers decreased their prices in 1999 did they begin to regain some of their lost market share.¹⁰⁵

Overall, there was significant underselling throughout the POI. The cumulated imports of conventional PSF from Korea and Taiwan undersold the domestic product in 162 out of 168 quarterly observations, or 96.4 percent of the time.¹⁰⁶ Underselling margins for subject imports from Korea for the various products examined ranged from 3.9 to 76.4 percent, and underselling margins for subject imports from Taiwan for the various products examined ranged from 1.9 to 78.2 percent.¹⁰⁷

While raw material prices declined over the POI, we find that the record does not support the respondents' argument that declining raw material costs fully account for the decline in prices, given the lack of record evidence that prices are based on raw material costs.¹⁰⁸ While we are troubled by the lack of confirmation of many lost sales and lost revenue allegations, we do not find this detracts from the other substantial evidence showing the adverse price effects of the subject imports.^{109 110} Based on this evidence, we find that the significant volumes of underpriced subject imports contributed to a significant degree to price depression.

E. Impact of the Cumulated Subject Imports on the Domestic Industry^{111 112}

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹¹³ These factors include output, sales, inventories, capacity utilization, market

¹⁰⁵ CR and PR at Table C-5, Tables V-1 to V-6 and V-8 to V-9.

¹⁰⁶ There were no reported domestic shipments of product 6 during the POI. CR and PR at Table V-6.

¹⁰⁷ CR at V-24, PR at V-16.

¹⁰⁸ CR at V-1 to V-2, PR at V-1.

¹⁰⁹ See generally, e.g., *Czestochowa v. United States*, 890 F. Supp. 1053, 1076 (Ct. Int'l Trade 1995); *Lone Star Steel Co. v. United States*, 650 F. Supp. 183, 186 (Ct. Int'l Trade 1986). Further, we note that some of the lost sales and lost revenue allegations, while not reported as having been confirmed, at least demonstrate competition between subject imports and the domestic like product. See CR at V-35 to V-43, PR at V-19 to V-24 (e.g., discussion of ***).

¹¹⁰ Chairman Bragg notes that in several instances Commission staff were able to confirm or partly confirm petitioners' lost sales and lost revenue allegations. CR at V-25 to V-26, PR at V-17 to V-18.

¹¹¹ The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final antidumping duty margins are as follows: Samyang Corporation (*de minimis*), Sam Young Synthetics Co. (7.96), Guem Poong Corporation (14.10), and all others from the Republic of Korea (11.38); Far Eastern Textiles, Ltd. (9.51), Nan Ya (5.77), and all others from Taiwan (7.53). See 65 Fed. Reg. 16877, 16879 (Mar. 30, 2000); 65 Fed. Reg. 16880, 16882 (Mar. 30, 2000); 65 Fed. Reg. 24678 (Apr. 27, 2000).

¹¹² Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in *Bicycles From China*, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996). Chairman Bragg joins the majority's impact findings. She notes that the addition of low-melt fiber to the analysis strengthens a finding of a significant adverse impact.

¹¹³ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in

share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the industry.”¹¹⁴

The data show a domestic industry with declines in a number of key performance indicators, despite increases in domestic demand during the POI. During the POI, apparent domestic consumption of conventional PSF increased each year, with an overall increase of *** percent between 1997 and 1999.¹¹⁵ Domestic producers’ shipments of conventional PSF as a share of apparent domestic consumption, however, declined overall during the POI, from *** percent in 1997 to *** percent in 1999.¹¹⁶ The unit value of domestic shipments of conventional PSF declined throughout the POI, from *** per pound in 1997 to *** per pound in 1998 and *** per pound in 1999.¹¹⁷ U.S. producers’ end-of-period inventories of conventional PSF rose from *** thousand pounds in 1997 to *** thousand pounds in 1998, then declined to *** thousand pounds in 1999.¹¹⁸

Although the domestic industry’s unit cost of goods sold for the production of conventional PSF declined over the POI from *** per pound in 1997 to *** per pound in 1999, and net sales quantity increased over the POI from *** thousand pounds in 1997 to *** thousand pounds in 1999, the net sales unit value declined from *** per pound in 1997 to *** per pound in 1999.¹¹⁹ As a result, the industry’s gross profits and operating income declined each year.¹²⁰ Gross profits declined from *** in 1997 to *** in 1998 and *** in 1999; operating income declined from *** in 1997 to *** in 1998 and *** in 1999.¹²¹ The ratio of operating income to sales dropped from *** percent in 1997 to *** percent in 1998, and to *** percent in 1999.^{122 123}

In sum, we find that the domestic conventional PSF industry is materially injured by reason of significant volumes of lower-priced subject imports of conventional PSF.¹²⁴

some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885).

¹¹⁴ 19 U.S.C. § 1677(7)(C)(iii).

¹¹⁵ Mem. INV-X-087 at Table C-5.

¹¹⁶ Mem. INV-X-087 at Table C-5.

¹¹⁷ Mem. INV-X-087 at Table C-5.

¹¹⁸ Mem. INV-X-087 at Table C-5.

¹¹⁹ Mem. INV-X-087 at Table C-5.

¹²⁰ Mem. INV-X-087 at Table C-5.

¹²¹ Mem. INV-X-087 at Table C-5.

¹²² Mem. INV-X-087 at Table C-5.

¹²³ We are troubled that as a result of an on-site verification of domestic producer KoSa, substantial changes to its reported data were required. *See* Apr. 18, 2000 Verification Report, Inv. Nos. 731-TA-825-826 (Final); *see also* CR at VI-1, VI-1 n.3, VI-9, VI-11, Tables VI-7, VI-8, VI-9, VI-10, VI-11, VI-12, PR at VI-1, VI-1 n.3, VI-5, Tables VI-7, VI-8, VI-9, VI-10, VI-11, VI-12. However, we are confident in the overall accuracy of the domestic industry financial data on the record after verification. We also note that there are some questions with respect to the capacity utilization figures for one domestic producer. CR at VI-1 n.3, PR at VI-1 n.3. However, our decision is not based on the relative capacity utilization rates in this industry.

¹²⁴ Chairman Bragg finds that a significant increase in the cumulated volume of undersold subject imports of certain PSF, including low-melt fiber, significantly depressed U.S. prices, and resulted in a significant adverse impact on the

IV. NO PRESENT MATERIAL INJURY BY REASON OF LTFV IMPORTS OF LOW-MELT FIBER FROM KOREA AND TAIWAN¹²⁵

For the reasons discussed below, we determine that the domestic industry producing low-melt fiber is not presently materially injured by reason of LTFV imports from Korea and Taiwan.

A. Cumulation

Because the petitions in these investigations were filed on the same day, the first statutory criterion for cumulation is satisfied. None of the four statutory exceptions to the general cumulation rule applies in the final phase of these investigations.¹²⁶ Therefore, we are required to determine whether there is a reasonable overlap of competition both between the subject imports of low-melt fiber from Korea and Taiwan, and between the subject imports of low-melt fiber and the domestic like product.

The parties do not dispute that the requirements are met for three of the four factors that the Commission ordinarily considers in its cumulation analysis: subject imports of low-melt fiber and the domestic like product are sold in the same geographical markets and through the same channels of distribution, and all were simultaneously present in the market. The sole cumulation issue, therefore, is the degree of fungibility between subject imports of low-melt fiber from Korea and Taiwan, and between subject imports of low-melt fiber and the domestic like product. Respondents do not argue that subject imports of low-melt fiber from Korea are not fungible with subject imports of low-melt fiber from Taiwan. Rather, the focus of their arguments is on differences between subject imports of low-melt fiber and domestically-produced low-melt fiber.

As discussed below, there are serious questions as to whether there is a reasonable degree of fungibility between the subject imports of low-melt fiber and the domestic like product. Nevertheless, given that the other statutory criteria are squarely met, and because cumulation does not affect our negative determination, we cumulate subject imports of low-melt fiber from Korea and Taiwan.

B. Conditions of Competition Specific to Low-Melt Fiber

Demand for low-melt fiber has grown steadily during the POI, with apparent domestic consumption increasing from *** thousand pounds in 1997 to *** thousand pounds in 1998 and *** thousand pounds in 1999, representing a *** percent increase between 1997 and 1999.¹²⁷

domestic industry. She therefore determines that LTFV imports of all forms of certain PSF from Korea and Taiwan caused material injury to the domestic industry.

¹²⁵ Chairman Bragg dissenting. Chairman Bragg does not join Sections IV and V of this opinion.

¹²⁶ See cumulation discussion supra in section III-A.

¹²⁷ CR and PR at Table C-3.

Shipments of nonsubject imports of low-melt fiber rose between 1997 and 1998, but declined in 1999, and their share of total apparent domestic consumption increased slightly from *** to *** percent between 1997 and 1998, and then declined significantly to *** percent in 1999.¹²⁸

We find that competition among subject imports of low-melt fiber from Korea and Taiwan and the domestic like product is highly attenuated due to substantial product differences. Respondents argue that subject imports of low-melt fiber have a 50 percent sheath/50 percent core structure and are used as a bonding agent in high loft (bulky) end uses, such as pillows, comforters, furniture, or other home furnishing products, whereas domestically-produced low-melt fiber has a 35/65 structure and historically has been used as a bonding agent in thinner, nonwoven fabrics like diaper fabric and industrial weights.¹²⁹ We find that the record indicates a general lack of substitutability between subject imports of low-melt fiber and the domestic like product.

Whereas the data collected through purchaser questionnaire responses indicates that all subject imports of low-melt fiber were purchased for use as a bonding agent in fill applications, only *** percent of the domestically-produced low-melt fiber was sold for use as a bonding agent in fill applications in 1999.¹³⁰ A *** did purchase subject imports of low-melt fiber during the POI for use as a bonding agent in nonfill applications, but determined that they were not suitable for such an end-use. Of the eight purchasers of domestically-produced low-melt fiber during the POI, three stopped purchasing from the only domestic producer, KoSa, for product incompatibility reasons.¹³¹ Despite losing *** low-melt fiber customers during the POI, KoSa nevertheless increased its production of low-melt fiber. As further evidence that domestic producers recognize the difference between domestically-produced low-melt fiber and imported low-melt fiber, we note that during the POI, *** purchased imported low-melt fiber rather than domestically-produced low-melt fiber.¹³²

Five importers reported that subject imports of low-melt fiber are not interchangeable with domestically-produced low-melt fiber, and of the five importers reporting that subject imports of low-melt fiber are interchangeable with domestically-produced low-melt fiber, ***.¹³³ A number of purchasers reported that subject imports of low-melt fiber were not interchangeable with the domestic like product, and several indicated that they were not aware of any domestic production of low-melt fiber.¹³⁴

¹²⁸ CR and PR at Table C-3.

¹²⁹ Taiwan Prehearing Brief at 7 n.11; Joint Respondents' Prehearing Brief at 3-45, Exhibit A; Hearing Tr. at 147-58, 162-65, 169-70, 197-208. We give little weight to petitioners' brief assertion, made for the first time in their post-hearing brief and without any documentary support, that KoSa ***, except as further evidence that low-melt fiber with a 35/65 structure is substantially different from low-melt fiber with a 50/50 structure.

¹³⁰ CR and PR at Table III-1; *** Purchaser Questionnaire Response at 5; *** Purchaser Questionnaire Response at 5.

¹³¹ *** Purchaser Questionnaire Response at 10; *** Purchaser Questionnaire Response at 10; *** Questionnaire Response at 10. In its producer questionnaire response, *** indicated that it is not capable of producing low-melt fiber. *** Producer Questionnaire at 12.

¹³² *** Importer Questionnaire Response at 10; see also April 14-15, 1999 Field Trip Notes of Jozlyn Kalchthaler and Teresa McKeivier, at 5.

¹³³ CR at II-23, PR at II-19; see also *** Importer Questionnaire Response at 18; *** Importer Questionnaire Response at 18; *** Importer Questionnaire Response at 18; *** Importer Questionnaire Response at 18.

¹³⁴ CR at II-24, PR at II-19 to II-20.

For all of these reasons, we find that subject imports of low-melt fiber are not readily substitutable for the domestic like product.¹³⁵

¹³⁵ As the U.S. Court of International Trade (“CIT”) has recognized, the record may contain substantial evidence that products are fungible enough to support a finding in one context (e.g., one like product), but not in another (e.g., cumulation or causation). Acciai Speciali v. United States, 19 CIT 1051, 1995 WL 476719, *11.

C. Volume of the Cumulated Subject Imports

The volume of cumulated subject imports of low-melt fiber rose from *** thousand pounds in 1997 to *** thousand pounds in 1998 and *** thousand pounds in 1999.¹³⁶ Shipments of cumulated subject imports of low-melt fiber in the U.S. market increased from *** thousand pounds in 1997 to *** thousand pounds in 1998 and *** thousand pounds in 1999, and their share of total apparent domestic consumption increased from *** percent in 1997 to *** percent in 1999.¹³⁷ The U.S. producer's shipments of low-melt fiber decreased from *** thousand pounds in 1997 to *** thousand pounds in 1998, then rose to *** thousand pounds in 1999; its market share decreased from *** percent in 1997 to *** percent in 1998, then rose to *** percent in 1999.¹³⁸

In light of our finding that subject imports of low-melt fiber are not readily substitutable for domestically-produced low-melt fiber, we do not find the increases in the volume and market share of cumulated subject imports are significant.

D. Price Effects of the Cumulated Subject Imports

The pricing data gathered in these investigations show that prices of both domestically-produced low-melt fiber and subject imports of low-melt fiber declined overall from the beginning of 1997 to the end of 1999.¹³⁹ As indicated previously, however, we do not find that subject imports of low-melt fiber are substitutable for domestically-produced low-melt fiber. Based on this finding, we do not find a significant degree of price depression or suppression by reason of subject imports of low-melt fiber.

E. Impact of the Cumulated Subject Imports on the Domestic Industry¹⁴⁰

Although the financial performance of the domestic low-melt fiber industry declined,¹⁴¹ based on our findings of lack of volume and price effects of subject imports of low-melt fiber on the domestic like product due to the lack of substitutability among the products, we do not find that subject imports adversely affected the domestic industry. None of the lost revenue and lost sales allegations involved low-melt fiber.¹⁴² We also note that, despite a large increase in demand, domestic capacity remained

¹³⁶ CR and PR at Table IV-3.

¹³⁷ CR and PR at Table C-3.

¹³⁸ CR and PR at Table C-3.

¹³⁹ CR and PR at Table V-7.

¹⁴⁰ The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final antidumping duty margins are as follows: Samyang Corporation (*de minimis*), Sam Young Synthetics Co. (7.96), Guem Poong Corporation (14.10), and all others from the Republic of Korea (11.38); Far Eastern Textiles, Ltd. (9.51), Nan Ya (5.77), and all others from Taiwan (7.53). See 65 Fed. Reg. 16877, 16879 (Mar. 30, 2000); 65 Fed. Reg. 16880, 16882 (Mar. 30, 2000); 65 Fed. Reg. 24678 (Apr. 27, 2000).

¹⁴¹ CR and PR at Table C-3. We note that there was some difficulty verifying the financial performance of the domestic low-melt fiber industry. CR at VI-1 n.3, VI-9; Table VI-7, PR at VI-1 n.3, VI-9, Table VI-7.

¹⁴² CR at V-24 to V-43, Tables V-10 to V-11, PR at V-17 to V-24, Tables V-10 to V-11.

steady, and at no point could it serve more than *** percent of apparent domestic consumption.¹⁴³ Therefore, we do not find that the domestic industry is materially injured by reason of subject imports of low-melt fiber.

V. THREAT OF MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS OF LOW-MELT FIBER¹⁴⁴

A. Cumulation for Purposes of Threat Analysis

In assessing whether the domestic industry producing low-melt fiber is threatened with material injury by reason of imports from two or more countries, the Commission has discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury.¹⁴⁵ In deciding whether to cumulate for purposes of making our threat determination, we also consider whether the subject imports are increasing at similar rates and have similar pricing patterns.¹⁴⁶ While there are several factors that weigh against cumulation, we cumulate subject imports of low-melt fiber from Korea and Taiwan because it does not affect our negative determination.

B. Statutory Factors

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued”¹⁴⁷ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether further dumped imports are imminent and whether material injury by reason of imports would occur unless an order is issued.¹⁴⁸ In making our determination, we have considered all statutory factors¹⁴⁹ that are relevant to these investigations.¹⁵⁰

¹⁴³ CR and PR at Table C-3.

¹⁴⁴ Chairman Bragg dissenting.

¹⁴⁵ 19 U.S.C. § 1677(7)(H).

¹⁴⁶ See *Torrington Co. v. United States*, 790 F. Supp. 1161 (Ct. Int’l Trade 1992); *Metallwerken Nederland B.V. v. United States*, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); *Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

¹⁴⁷ 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

¹⁴⁸ 19 U.S.C. § 1677(7)(F)(ii). While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 854.

¹⁴⁹ The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the WTO Antidumping Agreement and Subsidies and Countervailing Measures Agreement, although “[n]o substantive change in Commission threat analysis is required.” SAA at 855.

¹⁵⁰ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the products at issue. With regard to antidumping or

There is some evidence indicating that subject imports of low-melt fiber may increase in volume in the imminent future should subject producers produce at full capacity, shift their exports from other markets to the United States, or sell from inventory. During the POI, Korean and Taiwan capacity utilization ranged from *** to *** percent and *** to *** percent, respectively.¹⁵¹ Korean exports of subject low-melt fiber to the United States accounted for *** percent of total Korean low-melt shipments in 1997, and decreased to *** percent of total Korean shipments by 1999, whereas Taiwan exports of subject low-melt fiber to the United States accounted for *** percent of total Taiwan low-melt shipments in 1997, *** percent in 1998, and *** percent in 1999.¹⁵² Importer inventories of subject low-melt fiber from both countries increased over the POI.¹⁵³

However, in light of our finding of a general lack of substitutability between subject imports and the domestic like product,¹⁵⁴ and the resulting lack of price effects, any increase in subject imports of low-melt fiber would not be likely to have adverse price effects or otherwise negatively impact the domestic industry in the imminent future.

Therefore, we determine that the domestic industry producing low-melt fiber is not threatened with material injury by reason of cumulated subject imports of low-melt fiber from Korea and Taiwan.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing conventional PSF is materially injured by reason of imports of conventional PSF from Korea and Taiwan that Commerce found to be sold in the United States at LTFV. We also determine that the domestic industry producing low-melt fiber is neither materially injured nor threatened with material injury by reason of imports of low-melt fiber from Korea and Taiwan that Commerce found to be sold in the United States at LTFV.¹⁵⁵

countervailing duty findings or remedies in effect in other countries with respect to certain PSF, petitioners allege that antidumping measures are in place against Korean imports of certain PSF in China, the European Union, India, Turkey, and Mexico. Respondents deny that trade restrictions were implemented by China against imports from Korea and note that the European Union revoked antidumping measures against Korea in August 1999. Although a subsequent investigation was initiated against Korean imports in October 1999, no order has been issued as of the date the record closed in these investigations. On the other hand, Taiwan reached an export price agreement with China under which Taiwan promised not to ship PSF to China at export prices below 92 percent of its domestic prices. Antidumping duty measures are in place against PSF from Taiwan in the European Union, and the margins are less than 7 percent. CR at VII-6, VII-13. We do not find these findings or remedies detract from the evidence noted herein supporting our negative threat determination.

¹⁵¹ CR and PR at Tables VII-3, VII-7.

¹⁵² CR and PR at Table VII-7.

¹⁵³ CR and PR at Table C-3.

¹⁵⁴ ***, as we noted supra in section IV-B. Given the lack of specificity of the information, we find it speculative at best that *** in the imminent future.

¹⁵⁵ Chairman Bragg finds that a significant increase in the cumulated volume of undersold subject imports of certain PSF, including low-melt fiber, significantly depressed U.S. prices, and resulted in a significant adverse impact on the domestic industry. She therefore determines that LTFV imports of all forms of certain PSF from Korea and Taiwan caused material injury to the domestic industry.